

Internal Revenue Service

Department of the Treasury
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October 06, 2008

Legend:

Distributing =

Controlled =

State X =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Shareholder 5 =

Business 1: =

Business 2: =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

jj =

Dear :

This letter responds to your representative's letter dated July 2, 2008, requesting rulings as to the Federal income tax consequences of a proposed transaction. Additional information was submitted by letters dated August 12, 2008 and September 10, 2008. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing a State X corporation is engaged in Business 1 and Business 2. Shareholder 1 owns aa shares of Distributing stock, Shareholder 2 owns bb shares of Distributing stock, Shareholder 3 owns cc shares of Distributing stock, Shareholder 4 owns dd shares of Distributing stock, and Shareholder 5 owns ee shares of Distributing (together consisting of all of the stock of Distributing).

Distributing has submitted financial information which indicates that Business 1 and Business 2 each have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what are represented as valid business reasons, Distributing proposes the following transactions (the "Proposed Transaction"):

- (i) Distributing will form Controlled, a State X corporation.
- (ii) Distributing will transfer Business 2 assets and liabilities to Controlled in exchange for all of Controlled stock (the "Contribution").
- (iii) Immediately after the Contribution, Distributing will distribute ff shares of Controlled stock to Shareholder 1, gg shares of Controlled stock to Shareholder 2, hh shares of Controlled stock to Shareholder 3, and ii shares of Controlled stock to Shareholder 4. Shareholder 5 will exchange its ee shares of Distributing stock for jj shares of Controlled stock. Together the pro rata distribution with respect to Shareholder 1, Shareholder 2, Shareholder 3 and Shareholder 4 and the exchange with respect to Shareholder 5 will constitute the Distribution.

REPRESENTATIONS

The taxpayer has made the following representations concerning the Proposed Transaction:

- (a) The fair market value of the Controlled stock to be received by Shareholder 5 will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder 5 in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee or in any capacity other than that of a Distributing shareholder.

- (c) The five years of financial information submitted concerning Business 1 and Business 2 represents its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (e) The Distribution is carried out for the following corporate business purposes: to enhance the success of Business 1 and Business 2 by enabling Distributing and Controlled to resolve management, systemic, or other problems that arise by the operation of different businesses within a single corporation. The distribution of the stock of Controlled is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (f) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) The total adjusted bases and the fair market value of the assets to be transferred to the Controlled corporation by the distributing corporation in the transaction will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by the controlled corporation and (ii) the total amount of any money and the fair market value of any property (within the meaning of section 361(b)) received by the distributing corporation from the controlled corporation and transferred to the shareholders or the creditors of the distributing corporation pursuant to the plan of reorganization.
- (h) The total fair market value of the assets transferred to the controlled corporation in the transaction will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by the controlled corporation in the exchange, (ii) the amount of any liabilities owed to the controlled corporation by the distributing corporation that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by the distributing corporation in the exchange. The fair market value of the assets of the controlled corporation will exceed the amount of its liabilities immediately after the exchange.
- (i) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (j) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to the Distribution.

- (k) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (l) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (m) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (n) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

RULINGS

Based solely on information submitted and the representations set forth above, we rule as follows:

- (1) The Contribution, followed by the Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing upon the Contribution. Sections 361(a) and 357(a).
- (3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately prior to its transfer. Section 362(b).
- (5) The holding period for each asset received by Controlled from Distributing will include the period during which Distributing held the asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).

- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the holder's of Distributing stock upon receipt of Controlled stock from Distributing. Section 355(a).
- (8) Shareholder 1, Shareholder 2, Shareholder 3 and Shareholder 4 will each respectively have an aggregate adjusted basis in its Distributing stock and Controlled stock after the Distribution equal to the respective shareholder's aggregate adjusted basis of the Distributing stock held immediately before the Proposed Transaction, allocated between the Distributing stock and the Controlled stock in proportion to the fair market values in accordance with § 1.358-2(a)(2). Sections 358(a), 358(b) and 358(c).
- (9) Shareholder 5's basis in the Controlled stock received in the Distribution will equal the basis of the Distributing stock surrendered in exchange therefor. Section 358(a)(1).
- (10) The holding period of the Controlled stock received by Shareholder 1, Shareholder 2, Shareholder 3 and Shareholder 4, will include the holding period of the Distributing stock held by each respective shareholder, provided that each respective shareholder held the Distributing stock as a capital asset on the date of the Distribution. Section 1223(1).
- (11) The holding period of the Controlled stock received by Shareholder 5 will include the holding period of the Distributing stock surrendered in exchange therefor, provided the Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).
- (12) Proper allocation of Distributing's earnings and profits will be made under §§ 312(h) and 1.312-10(a).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Proposed Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Assistant to Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: